



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/167678

PRELIMINARY RECITALS

Pursuant to a petition filed August 03, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on August 25, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Department of Health Services correctly denied the Petitioner auxiliary benefits for August 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

||

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Katheryn May, HSPC Sr.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On May 27, 2015, Milwaukee Enrollment Services (the agency) sent the Petitioner a Notice of Proof needed giving the Petitioner until June 5, 2015 (nine days) to provide verification of her living arrangement and Wisconsin residency. (Exhibit 11)
3. On June 18, 2015, the agency sent the Petitioner a notice, indicating that her FoodShare benefits would be ending effective August 1, 2015, because she did not provide the required proof. (Exhibit 12)
4. On June 29, 2015, the Petitioner went to the agency with the required proof. (Exhibit 3)
5. On June 30, 2015, the agency sent the Petitioner a notice, indicating that effective August 1, 2015, her FoodShare benefits would total \$234 per month. (Exhibit 13)
6. On July 6, 2015, the agency sent the Petitioner a notice, indicating that effective August 1, 2015, her FoodShare benefits would be reduced from \$396.00 per month to \$96.00 per month, because one member of her household, Q, was not getting food stamps in another state. (Exhibit 14)
7. On July 20, 2015, the Petitioner called the agency to inquire about Q's benefits. The agency determined that it incorrectly removed Q from Petitioner's case. Per a June 30, 2015 case comment, Q last received out of state benefits in July 2015. (Exhibit 3)
8. On July 21, 2015, the agency sent the Petitioner a notice, indicating that effective August 1, 2015, her FoodShare benefits would total \$234.00 per month, because Q was added back into the household. (Exhibit 15)
9. For August 2015, the Petitioner's total benefit was determined to be \$260.00. However, she is repaying a FoodShare overpayment that occurred in 2012. As such, \$26.00 per month (10%) would be recouped. Thus, Petitioner's total FoodShare issuance worked out to be $\$260.00 - \$26.00 = \$234.00$ per month. (See Exhibit 10)
10. Petitioner's FoodShare benefits are issued on the second of each month. (Exhibit 4)
11. On August 2, 2015, the Department of Health Services (DHS) issued \$96.00 to the Petitioner. (Exhibit 4)
12. DHS did not issue an auxiliary benefit for August 2015. (Exhibit 5)
13. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on August 3, 2015. (Exhibit 1)

DISCUSSION

FoodShare Wisconsin Handbook (FSH) §7.3.1.3 states, "Offset an existing FS overissuance (claim) with the calculated FS underissuance (restoration) amount when both situations exist. Offset the claim against any amount that has not been restored to the FS group. You may offset a suspended or terminated claim amount against an underissuance amount."

FSH §7.3.1.4 also indicates, "An initial allotment must not be reduced to offset a claim. This includes retroactive initial allotment. Person Adds are not initial allotments. Therefore, you can offset claims against person add auxiliaries. Offset the entire auxiliary, if the claim balance is more than the auxiliary..."

The Petitioner received \$96.00 in benefits on August 2, 2015. Pursuant to the notice issued on July 21, 2015, \$234.00 should have been issued to the Petitioner for August 2015.

It is undisputed that no auxiliary benefits were issued to the Petitioner for August 2015.

Petitioner argues that she should have been issued auxiliary benefits to make up the difference.

NOTE: The agency incorrectly calculated an auxiliary amount of \$154.00 –see Exhibit 5. The correct auxiliary amount in question is \$138 (\$234-\$96).

The agency asserts that no auxiliary was issued, because it was applied to the balance of Petitioner's FoodShare overpayment, pursuant to FSH §7.3.1.4.

Exhibit 6 is a Claim Recoupment History printed on August 7, 2015. It does not show the \$138 being applied to the balance of Petitioner's overpayment. So, it is not clear what happened to the auxiliary benefits.

It should be noted that FSH §6.3.1 states that, "A notice of adverse or negative action, regarding the termination or reduction of benefits must be mailed at least 10 days before the effective date of the action..."

If the agency was going to withhold the auxiliary amount, effectively reducing the FoodShare benefits the Petitioner actually would receive in August, it should have issued the Petitioner a notice of negative action advising her of this. It does not appear from this record that the agency provided the required notice. Accordingly, the agency will have to issue to the Petitioner the \$138 auxiliary benefit.

CONCLUSIONS OF LAW

The agency incorrectly denied the Petitioner auxiliary benefits in the amount of \$138 for August 2015.

THEREFORE, it is

ORDERED

That the agency issue to the Petitioner, auxiliary benefits for August 2015, in the amount of \$138.00. The agency shall take all administrative steps necessary to complete this task within ten days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision.** Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of
Milwaukee, Wisconsin, this 15th day of
September, 2015

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 15, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability